

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FAMEFLYNET, INC.,

Plaintiff,

vs.

HOLLYWOOD FAN SITES, LLC, FAN SITES
ORG, LLC, and HOLLYWOOD.COM, LLC,

Defendants.

Case No.: 15-cv-00412

ANSWER TO COMPLAINT

Defendants Hollywood Fan Sites, LLC, Fan Sites Org, LLC, and Hollywood.com, LLC (collectively, “Defendants”), by and through their undersigned counsel, for their Answer to the complaint of plaintiff FameFlynet, Inc. (“Plaintiff”), filed January 20, 2015 (the “Complaint”), aver as follows:

INTRODUCTION

Defendants aver that the Introduction to the Complaint does not require a response, as it only purports to identify the statute upon which Plaintiff bases its claims and the relief sought. To the extent a response is required, Defendants deny that they have violated the Copyright Act, 17 U.S.C. § 501 *et seq.*

PARTIES

1. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1 of the Complaint.

2. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2 of the Complaint, except admit that Plaintiff is the registered holder of the copyrights to certain photographs.

3. Defendants aver that Paragraph 3 of the Complaint in part states a legal conclusion as to which no response is required. To the extent a response is required to some or all of Paragraph 3, Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations.

4. Defendants deny the allegations in Paragraph 4 of the Complaint except admit that Hollywood Fan Sites, LLC is a Delaware limited liability company.

5. Defendants deny the allegations in Paragraph 5 of the Complaint except admit that Fan Sites Org, LLC is a Delaware limited liability company.

6. Admitted.

7. Defendants deny the allegations of Paragraph 7 of the Complaint except admit that defendants Hollywood Fan Sites, LLC and Fan Sites Org, LLC operate (but do not control or monitor the content of) websites, some of which are known collectively as the Fan Sites Network, which are dedicated to, among other things, celebrities and other artists, films, and television shows.

JURISDICTION AND VENUE

8. Defendants aver that Paragraph 8 of the Complaint states a legal conclusion as to which no response is required. To the extent a response is required, Defendants admit the Court has subject matter jurisdiction over the copyright claims asserted in the Complaint but aver that such claims are based on blatantly false allegations of fact.

9. Defendants aver that Paragraph 9 of the Complaint states a legal conclusion as to which no response is required. To the extent a response is required, Defendants admit that venue is proper in this Judicial District.

FACTUAL ALLEGATIONS

Plaintiff's Business

10. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10 of the Complaint.

11. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11 of the Complaint.

12. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 of the Complaint.

Plaintiff's Copyrights

13. Defendants aver that Paragraph 13 of the Complaint in part states a legal conclusion as to which no response is required. To the extent a response is required to some or all of Paragraph 13, Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations.

14. Defendants aver that Paragraph 14 of the Complaint states legal conclusions as to which no response is required. To the extent a response is required, Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14.

15. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15 of the Complaint, except admit that Exhibit 1 to the Complaint purports to list copyright registrations for collections of photographs that Plaintiff

alleges it has applied for and/or received and that Plaintiff purports to incorporate Exhibit 1 into the Complaint. Defendants aver, upon information and belief, that Plaintiff has asserted duplicative instances of infringement in Exhibit 1 to the Complaint, such that the number of alleged infringements is vastly overstated. Defendants further aver, upon information and belief, that Plaintiff has alleged acts of infringement in Exhibit 1 to the Complaint on websites that are not hosted by Defendants.

16. Denied, and Defendants aver that the allegations in Paragraph 16 of the Complaint lack any substantial basis and are recklessly made.

17. Defendants deny the allegations in Paragraph 17 of the Complaint except admit that defendants Hollywood Fan Sites, LLC and Fan Sites Org, LLC host (but do not control, supervise, or monitor the content of) certain websites run by third-party, independent webmasters, some of which are known collectively as the “Fan Sites Network.”

18. Defendants deny the allegations in Paragraph 18 of the Complaint and aver that it does not constitute a grammatical sentence, except admit that some websites in the Fan Sites Network are dedicated to celebrities, films, and television shows and that some of these websites contain, among other types of content, photographs of celebrities.

19. Denied, and Defendants aver that the allegations in Paragraph 19 of the Complaint lack any substantial basis and are recklessly made.

20. Denied, and Defendants aver that the allegations in Paragraph 20 lack any substantial basis and are recklessly made.

21. Defendants deny the allegations in Paragraph 21 of the Complaint except admit that Exhibit 2 to the Complaint purports to list websites in the Fan Sites Network on which Plaintiff alleges it has identified infringing content. Defendants aver, upon information and

belief, that Plaintiff has asserted duplicative instances of infringement in Exhibit 2 to the Complaint, such that the number of alleged infringements is vastly overstated. Defendants further aver, upon information and belief, that Plaintiff has alleged acts of infringement in Exhibit 2 to the Complaint on websites that are not hosted by Defendants.

22. Denied, and Defendants aver that Plaintiff has previously granted Defendants a license to use Plaintiff's photographs.

23. Defendants deny the allegations in Paragraph 23 of the Complaint except admit that certain photographs as to which Plaintiff asserts copyright rights have appeared on some websites hosted by defendants Hollywood Fan Sites, LLC and Fan Sites Org, LLC.

24. Denied.

25. Denied.

26. Denied.

27. Denied, and Defendants aver that the allegations in Paragraph 27 of the Complaint lack any substantial basis and are recklessly made.

28. Defendants deny the allegations in Paragraph 28 of the Complaint except admit that the independent webmasters have the discretion to update the content on the respective websites hosted by defendants Hollywood Fan Sites, LLC and Fan Sites Org, LLC and that such independent webmasters receive no compensation from Defendants.

29. Defendants deny the allegations in Paragraph 29 of the Complaint and respectfully refer the Court to the Terms of Use referenced therein for the full contents thereof.

30. Denied.

31. Denied, and Defendants aver that the allegations in Paragraph 31 of the Complaint lack any substantial basis and are recklessly made.

32. Defendants deny the allegations in Paragraph 32 of the Complaint except admit that Hollywood Fan Sites, LLC and Fan Sites Org, LLC review websites from time to time to ascertain whether they have become dormant but otherwise do not monitor or review the content of the websites.

33. Defendants deny the allegations in Paragraph 33 of the Complaint except admit that defendants Hollywood Fan Sites, LLC and Fan Sites Org, LLC have the right to remove content on the websites they host.

34. Denied, and Defendants aver that the allegations in Paragraph 34 of the Complaint lack any substantial basis and are recklessly made.

35. Denied, and Defendants aver that the allegations in Paragraph 35 of the Complaint lack any substantial basis and are recklessly made.

36. Denied, and Defendants aver that the allegations in Paragraph 36 of the Complaint lack any substantial basis and are recklessly made.

37. Denied, and Defendants aver that the allegations in Paragraph 37 of the Complaint lack any substantial basis and are recklessly made.

38. Denied, and Defendants aver that the allegations in Paragraph 38 of the Complaint lack any substantial basis and are recklessly made.

39. Defendants deny the allegations in Paragraph 39 of the Complaint except admit that at a time prior to when this action was filed, some but not all of the websites contained paid advertisements sourced by defendants Hollywood Fan Sites, LLC and Fan Sites Org, LLC and admit that the independent webmasters sometimes source their own paid advertisements.

40. Denied, and Defendants aver that the allegations in Paragraph 40 of the Complaint lack any substantial basis and are recklessly made.

41. Denied.

42. Defendants deny the allegations in Paragraph 42 of the Complaint except Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 42 of the Complaint as to the motivations of the independent webmasters.

43. Defendants deny the allegations in Paragraph 43 of the Complaint except admit that they provide free webhosting services to the independent webmasters.

First Cause of Action
Against All Defendants
(Copyright Infringement, 17 U.S.C. § 501 *et seq.*)

44. Defendants repeat their responses to each and every allegation contained in Paragraphs 1 through 43 of the Complaint as if set forth fully herein.

45. Defendants aver that Paragraph 45 of the Complaint states a legal conclusion as to which no response is required. To the extent a response is required, Defendants deny on information and belief the allegations in Paragraph 45.

46. Denied, and Defendants aver that the allegations in Paragraph 46 of the Complaint lack any substantial basis and are recklessly made.

47. Denied.

48. Defendants aver that Paragraph 48 of the Complaint states a legal conclusion as to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 48.

49. Denied.

Second Cause of Action
Against All Defendants
(Contributory Copyright Infringement)

50. Defendants repeat their responses to each and every allegation contained in Paragraphs 1 through 49 of the Complaint as if set forth fully herein.

51. Denied, and Defendants aver that the allegations in Paragraph 51 of the Complaint lack any substantial basis and are recklessly made.

52. Denied.

53. Denied, and Defendants aver that the allegations in Paragraph 53 of the Complaint lack any substantial basis and are recklessly made.

54. Denied, and Defendants aver that the allegations in Paragraph 54 of the Complaint lack any substantial basis and are recklessly made.

55. Denied, and Defendants aver that the allegations in Paragraph 55 of the Complaint lack any substantial basis and are recklessly made.

56. Denied, and Defendants aver that the allegations in Paragraph 56 of the Complaint lack any substantial basis and are recklessly made.

57. Denied, and Defendants aver that the allegations in Paragraph 57 of the Complaint lack any substantial basis and are recklessly made.

58. Defendants aver that Paragraph 58 of the Complaint states a legal conclusion as to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 58.

59. Denied.

Third Cause of Action
Against All Defendants
(Vicarious Copyright Infringement)

60. Defendants repeat their responses to each and every allegation contained in Paragraphs 1 through 59 of the Complaint as if set forth fully herein.

61. Defendants aver that Paragraph 61 of the Complaint states a legal conclusion as to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 61.

62. Defendants aver that Paragraph 62 of the Complaint states a legal conclusion as to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 62.

63. Denied, and Defendants aver that the allegations in Paragraph 63 of the Complaint lack any substantial basis and are recklessly made.

64. Denied, and Defendants aver that the allegations in Paragraph 64 of the Complaint lack any substantial basis and are recklessly made.

65. Defendants aver that Paragraph 65 of the Complaint states a legal conclusion as to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 65.

66. Denied.

Fourth Cause of Action
Against All Defendants
(Injunction Pursuant to 17 U.S.C. § 502)

67. Defendants repeat their responses to each and every allegation contained in Paragraphs 1 through 66 of the Complaint as if set forth fully herein.

68. Defendants aver that Paragraph 68 of the Complaint states a legal conclusion as to which no response is required. To the extent a response is required, Defendants admit the allegations in Paragraph 68.

69. Denied.

70. Defendants deny the allegations in Paragraph 70 of the Complaint except admit that Plaintiff is requesting a permanent injunction.

DEFENSES AND AFFIRMATIVE DEFENSES

Without assuming any burden they would not otherwise bear, and without waiving and hereby expressly reserving the right to assert any and all defenses at such time and to such extent as discovery and developments dictate, Defendants at this time assert the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

Plaintiff's claims are barred to the extent Plaintiff cannot prove ownership of the copyrights asserted in the Complaint.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred to the extent Plaintiff failed to timely register the copyrights asserted in the Complaint, or to the extent said copyrights are otherwise unenforceable.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the safe-harbor provisions of the Digital Millennium Copyright Act (the "DMCA"), 17 U.S.C. § 512, based on, *inter alia*, Plaintiff's failure to provide DMCA-compliant notice of any of the claimed infringements.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred to the extent the claimed infringing use of their works was authorized by an express or implied license.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of fair use.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands based on, *inter alia*, Plaintiff's deliberate failure to provide Defendants with notice of claimed infringement of any of the works at issue prior to commencing this action and, on information and belief, on Plaintiff's intentional inducement of the allegedly infringing use of their photographs.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by Plaintiff's failure to mitigate damages.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel.

NINTH AFFIRMATIVE DEFENSE

To the extent Plaintiff proves infringement by any defendant, Plaintiff's damages are limited because any such infringements were innocent.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred for failure to state a claim.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to a separate statutory damage award for each of the multiple infringing copies it claims was made of certain of its allegedly copyrighted photographs.

PRAYER FOR RELIEF

For the reasons set forth above, Defendants respectfully request that the Court:

1. Dismiss the Complaint in its entirety with prejudice;
2. Enter judgment in favor of the Defendants and against Plaintiff on each and every claim set forth in the Complaint;
3. Award all reasonable fees, costs, and expenses to Defendants as permitted by law;
and
4. Award such other and further relief as the Court deems just and proper.

Dated: New York, New York
February 10, 2015

Respectfully submitted,

s/ Richard L. Levine
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